

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	Criminal No. 1:01-CR-00268-01
	:	
v.	:	(Judge Caldwell)
	:	
KAREEM A. MONTGOMERY	:	(Electronically Filed)

MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)

AND NOW comes Kareem A. Montgomery, by his attorney, Thomas A. Thornton, of the Federal Public Defenders Office, and files this Motion for Relief Under 18 U.S.C. § 3582(c). In support thereof, it is averred as follows:

1. On August 15, 2001, a Grand Jury sitting in the Middle District of Pennsylvania returned a one count Indictment charging Kareem A. Montgomery with drug trafficking. Specifically the distribution and possession with the intent to distribute 50 grams or more of cocaine base a/k/a “crack” in violation of 21 U.S.C. § 841 (a)(1).
2. Kareem A. Montgomery appeared before this Honorable Court on January 4, 2002 and entered a plea of guilty to Count One of the Superseding Indictment

charging the same offense of distribution and possession with the intent to distribute 50 grams or more of cocaine base.

3. The Court ordered the preparation of a presentence report.
4. The 2001 edition of the United States Sentencing Guidelines Manual was used to calculate Kareem A. Montgomery's sentencing guideline range.
5. The presentence report provides that Kareem A. Montgomery was accountable for at least 1.5 kilograms of cocaine base.
6. The presentence report listed the base offense level as 38. The offense level was increased by two levels for possession of a weapon and reduced by three levels for acceptance of responsibility. This resulted in a final offense level of 37.
7. Kareem A. Montgomery was assigned a criminal history category of II.
8. Kareem A. Montgomery's sentencing guideline range was 235-293 months.

9. After awarding credit for acceptance of responsibility, the court adopted the findings of the presentence report.

10. On January 13, 2005, this Honorable Court sentenced Kareem A. Montgomery to a term of imprisonment of 131 months. This represented an approximate 44 percent reduction from the bottom of the guideline range based on a substantial assistance motion from the Government.

11. Kareem A. Montgomery is serving this sentence at MDC Brooklyn.

12. Kareem A. Montgomery's projected release date is February 17, 2011.

13. On November 1, 2007, the United States Sentencing Commission amended the Drug Quantity Table and reduced the offense level for an offense involving 1.5 kilograms but less than 4.5 kilograms of cocaine base by 2 levels to a level 36. (Amendment 706).

14. On December 12, 2007, the United States Sentencing Commission announced its decision to apply the amendments to the crack guidelines

retroactively effective March 3, 2008 and listed Amendment 706 in the new U.S.S.G. § 1B1.10 (c).

15. Pursuant to 18 U.S.C. § 3582(c)(2), “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable,”

16. Under the retroactive application of the amendment to the sentencing guidelines, Kareem A. Montgomery’s total offense level is 38 and with a 3 level reduction for the acceptance of responsibility, the final offense level is 35.

17. An offense level of 35 and a criminal history category of II results in a now advisory guideline imprisonment range of 188 to 235 months.

18. A 44 percent departure from the new bottom of the guideline range results in a sentence of approximately 105 months. However, Mr. Montgomery must still

face the mandatory minimum sentence which only allows for a reduction to 120 months.

19. Because Kareem A. Montgomery had been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, he moves this Honorable Court to reduce the term of imprisonment in accordance with 18 U.S.C. § 3582(c)(2).

20. Defense counsel has communicated with Acting United States Attorney Martin C. Carlson who indicated that he would be filing a separate response .

WHEREFORE, it is respectfully requested that this Honorable Court grant the foregoing Motion for Relief Under 18 U.S.C. § 3582(c).

Respectfully submitted,

Date: April 15, 2008

/s/ Thomas A. Thornton
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CERTIFICATE OF SERVICE

I, Thomas A. Thornton, Federal Public Defender for the Middle District of Pennsylvania, do hereby certify that I served a copy of the foregoing **MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)(2)**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

Martin C. Carlson, Esquire

[REDACTED]
[REDACTED]
[REDACTED]

Eric Pfisterer, Esquire

[REDACTED]
[REDACTED]
[REDACTED]

Drew Thompson

[REDACTED]
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Kareem A. Montgomery

[REDACTED]
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Date: April 15, 2008

/s/ Thomas A. Thornton

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